APPENDIX A.

THE JOURNAL of the American Medical Association, issue of March 27, 1943, Vol. 121, No. 13, p. 1011:

"NONGOVERNMENTAL HOSPITALS.

In the field of nongovernmental institutions there are 4,421 hospitals—a reduction in number from 4,494 nongovernmental hospitals existing a year ago. Their bed capacity at present, however, is 368,046, a considerable increase over 358,870 reported last year. Their basinets now number 59,620 as compared with 54,669 a year ago. The total patients admitted were 8,535,935, showing quite a large increase over their former figure, 7,933,586. The average census changed during the year from 255,147 to 267,390.

The nongovernmental hospitals fall readily into two general groups—the nonprofit organizations, section B of table 1, composed of those that are church related, and other nonprofit associations; and section C of table 1, composed of hospitals that are owned by individuals or partnerships and those owned by corporations that are unrestricted as to profit. In the nonprofit group are 2,926 with a capacity of 316,291 and 51,416 basinets to which were admitted 7,463,648 patients and which had an average census of 236,154. The nonprofit group, therefore, showed a strong increase, and the growth was shared in some part by the church related hospitals but to a much greater extent by the other nonprofit associations.

Church hospitals show a net loss from 993 to 977 but a considerable increase in the number of beds and basinets. Their patients admitted increased from 2,961,594 to 3,211,162 and their average census from 90,195 to 94,521.

The other nonprofit associations increased in number from 1,917 to 1,949 and in capacity from 182,140 beds to 190,150 beds and in bassinets from 26,422 to 29,154. They admitted 4,252,486 as compared with 3,931,141 last year, and their average census was 141,633 as compared with 132,472 last year."

APPENDIX B.

Section 2 of
California Unemployment Insurance Act (Statutes 1935), p. 1227.

This act is enacted as a part of a National plan of unemployment reserves and social security, and for the purpose of assisting in the stabilization of unemployment conditions. The imposition of the tax herein imposed upon California industry alone, without a corresponding tax be imposed upon all industry in the United States, would, by the corresponding penalty upon California industry, defeat the very purposes of this act set forth in section 1. Therefore this act shall take effect only if and when there is enacted legislation by the United States Government providing for a tax upon the payment of wages by employers in this State, against which all or any part of the contributions required by this act may be credited.

Whenever such legislation enacted by the United States Government is repealed, amended, affected or otherwise changed in such manner that the contributions required by this act or some portion thereof can not be thus credited, then upon the date of such change, the provisions of this act requiring contributions and providing for payment of benefits shall cease to be operative and any assets in the unemployment fund or unemployment administration fund shall in the discretion of the State Treasurer be held in the then existing depositaries or otherwise in the State treasury. In the case of the unemployment administration fund, such moneys may thereafter be dealt with by the State Treasurer pursuant to the conditions of the grant thereof to the State by the United States Government or agency thereof.

APPENDIX C.

Authorities Holding Non-Profit Hospitals To Be per se Charitable Institutions.

Buchanan *v.* Kennard, 234 Mo. 117, 139, 136 S. W. 415, Ann. Cas. 1912D 50.

In re Mendelsohn, 262 App. Div. 605, 31 N. Y. S. (2d) 435, 440, (social security tax).

Commissioner of Internal Revenue *v.* Battlecreek Inc., 126 Fed. (2d) 405, (income tax).

In re Rust's Estate, 168 Wash. 344, 12 Pac. (2d) 396, 398 (1932), (Exemption from taxation).

New England Sanitarium *v.* Inhabitants of Stoneham, 205 Mass. 335, 91 N. E. 385, 387, (1910), (Exemption from taxation).

Mulliner *v.* Evangelischer Diakonniessenverein, 144 Minn. 392, 175 N. W. 699.

Magnuson *v.* Swedish Hospital, 99 Wash. 399, 169 Pac. 828, 830, (1918).

Brattleboro Retreat *v.* Town of Brattleboro, 106 Vt. 228, 173 A. 209, 212, (1934), (Exemption from taxation).

Hearns *v.* Waterbury Hospital, 66 Conn. 98, (1895), 33 Atl, 595.

Lutheran Hospital Ass'n. *v.* Baker, 40 S. D. 226, 167 N. W. 148 (1918), (Exemption from taxation).

State *v.* H. Longstreet Taylor Foundation, 198 Minn. 263, 269 N. W. 469 (1936), (Exemption from taxation).

German Hospital *v.* Board of Review, 233 Ill. 246, 84 N. E. 215. (Exemption from taxation).

Barnes *v.* Providence Sanitarium, 229 S. W. 588, (Tex. Civ. App.).

County of Henepin *v.* Brotherhood of Gethsemane, 27 Minn. 460, 38 A. R. 298, (Exemption from taxation).

Maretick *v.* South Chicago Community Hospital, 297 Ill. App. 488, 17 N. E. (2d) 1012, 1013.

Union Pacific Railway Co. *v.* Artist, 60 Fed. 365, (C. C. A. 8th, 1894), (Railroad hospital).

Texas Central R. Co. *v.* Zumwalt, 103 Texas 603, 132 S. W. 113, 30 L. R. A. (N. S.) 1206, (Railroad hospital).

Carr *v.* Northern Pacific Beneficial Ass'n., 128 Wash. 484, 221 Pac. 981.

Richardson *v.* Carbon Hill Coal Co., 10 Wash. 656, 39 Pac. 95.

Wells *v.* Ferry Baker Lumber Co., 57 Wash. 658, 107 Pac. 869, 29 L. R. A. (N. S.) 426.

Barden *v.* Atlantic Coastline Ry. Co., 152 N. C. 318, 67 S. E. 971.

Thomas *v.* Postal Telegraph-Cable Co., 48 S. W. (2d) 422, (Ct. Civ. App. Tex. 1930).

Galveston H. & S. A. Ry. Co. *v.* Hanway, 57 S. W. 695, (Ct. Civ. App. Tex. 1900).

Southern etc. Sanitarium *v.* Wilson, 45 Ariz. 522, 46 Pac. (2d) 118, 125, 77 Pac. (2d) 458.

Bedford *v.* Colorado Fuel & Iron Corp. 102 Colo. 538, 81 Pac. (2d) 752, 759.

Miller *v.* Mohr, 198 Wash. 619, 89 Pac. (2d) 807.

McDonald *v.* Mass. Gen'l Hospital, 120 Mass. 432, 21 Am. Rep. 529.

Reynolds Memorial Hospital *v.* Marshall County Court, 78 West Va. 685, 90 S. E. 238 (1916).

Enell *v.* Baptist Hospital, 45 S. W. (2d) 395 (Tex. Civ. App. 1931).

City of Palestine *v.* Missouri-Pacific Lines H. Ass'n., 99 S. W. (2d) 311, (Ct. Civ. App. Tex. 1936).

Miami Battlecreek *v.* Lummus, 140 Fla. 718, 192 So. 211 (1939).

Rush Hospital Benev. Ass'n. *v.* Board of Sup'rs., 187 Miss. 204, 192 So. 829 (1940).

Piedmont Memorial Hospital *v.* Guilford County, 218 N. C. 673, 12 S. E. (2d) 265.

Virginia Mason Hospital *v.* Larson, 9 Wash. (2d) 284, 114 Pac. (2d) 976, (social security tax).

Beverly Hospital *v.* Early, 292 Mass. 201, 197 N. E. 641, 100 A. L. R. 1332.

City of Dallas *v.* Smith, 130 Tex. 225, 107 S. W. (2d) 872.

Illinois Central R. Co. *v.* Moodie, 23 Fed. (2d) 902 (C. C. A. 5th).

Scott on Trusts (1939), p. 1996.

Zollman on Charities, p. 188.

Trusts, Restatements, Sections 372, 376.

Bogert on Trusts (1935), Vol. 2 p. 1163.

APPENDIX D.

Authorities relative to clause, "No part of the net earnings of which applies to the benefit of any private shareholder or individual."

United States v. *Proprietors of Social Law Library,* 102 Fed. (2d) 481, 484, (C. C. A. 1st, 1939).

Application of net earnings to improvements to Library rendering it more serviceable to members, does not make institution non-charitable.

Santee Club v. *White,* 87 Fed. (2d) 5, (C. C. A. 5th).

Profit on sale of small unusable portion of lands of game club does not inure to its shareholders, use of club's facilities not being a "benefit".

Koon Kreek Klub v. *Thomas,* 108 Fed. (2d) 616, 618 (C. C. A. 5th).

Rents from grazing privilege in club's game preserve, and cash consideration paid for oil lease thereon, same being used to pay mortgage on club's property, held not to "inure" to members' benefit.

Scofield v. *Corpus Christi Golf & Country Club.* 127 Fed. (2d) 452, (C. C. A. 5th, 1942).

Factual situation similar to that in preceding case.

Commissioner of Internal Revenue v. *Kensico Cemetery,* 96 Fed. .(2d) 594, 596 (C. C. A. 2d, 1938).

"Intangible values" resulting from application of revenues of membership cemetery corporation to extension of cemetery and to embellishment of grounds, does not inure as a net profit to members.

District of Columbia v. *Mt. Vernon Seminary,* 100 Fed. (2d) 116, 118 (Ct. App. Dist. Col.)

Property is not used for "private gain" and is exempt from taxation, where all net earnings used for educational purposes and continued improvement of institution.

Crooks v. *Kansas City Hay Dealers' Ass'n.,* 37 Fed. (2d) 83, 87.

That, on final dissolution, accumulated profits would go to the individual members, does not destroy exemption.

Roche's Beach Inc. v. *Commissioner,* 96 Fed. (2d) 776, C. C. A. 2d (1938).

Profit-making corporation required, under testamentary trust, to turn over income to a charitable foundation, held exempt from income tax as a corporation organized and operating exclusively for charitable purposes.

King County Insurance Association, 37 B. T. A. 288, 292 (1938).

Receipt of income by non-profit organization, which served to reduce members' dues, does not inure to benefit of private individual.

Oregon Casualty Association, 37 B. T. A. 340, 345 (1938).

Return to members of non-profit organization of overpayment of assessments does not constitute an inuring to their benefit.

Waynesboro Manufacturers Ass'n., 1 B. T. A. 911, 914.

Earnings of non-profit association, where retained by it for its own use, do not constitute an inuring to benefit of any individual.

Accord.

American Society of Cinematographers, 42 B. T. A. No. 102.

There have been similar rulings by the Treasury Department.

Cum. Bull. III-1, p. 230, 232, S. M. 2710.

Cum. Bull. 1919, p. 202, S. 958.

APPENDIX E.

The principles by which an institution's charitable character is determined.

(a) *The nature of "charity" in General.* "Charity" represents "both a personal and a social endeavor to ameliorate the conditions which exist in society", (Enc. Brit., 14th (1936) Ed., Vol. 5, p. 248). "It has no necessary relation to relief or alms. It may mean a consideration shown for the welfare of others either individually or generally" (Id.) A charitable use refers to "almost anything that tends to promote the well doing and well being of social man." * In 3 Paul & Mertens on Federal Income Taxation, p. 582, Sec. 32.19, "charity" is defined as "a gift, act or service for the benefit of an indefinite number of persons."

(b) "Charity" is not limited to almsgiving or gifts to the poor, but its legal meaning is more comprehensive than its popular significance.

Bogert on Trusts, Vol. 2, pp. 1163-4;

Gossett *v.* Swinney, 53 Fed. (2d) 772, 776;

Old Colony Trust Co. *v.* Welch, 25 Fed. Supp. 45, 58 (D. C. D. Mass. 1938);

Harrison *v.* Barker Annuity Fund, 98 Fed. (2d) 286 (C. C. A. 7th);

Darcey *v.* O'Brien, 65 Fed. (2d) 599 (Ct. App. Dist. Col.);

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* Ould *v.* Washington Hospital, 95 U. S. 303, 311.

Powers *v.* Massachusetts Homeopathic Hospital, 101 Fed. 896 (Cir. Ct. Mass.);
14 Corp. Jur. Secun. 411.

(c) The test of a charity is to be found in the purpose for which the institution is founded and exists. The motive of, or benefit to, a donor or settlor are immaterial.

Bogert on Trusts, Vol. 2, pp. 1126-7;
Fire Insurance Patrol *v.* Boyd, 120 Pa. St. 624, 6 A. S. R. 745, 750, 1 L. R. A. 417;
Fordyce & McKee *v.* Women's Christian Nat. Library Ass'n., 79 Ark. 550, 96 S. W. 155;
Harrison *v.* Barker Annuity Fund, 98 Fed. (2d) 286;
Union Pacific Railway Co. *v.* Artist, 60 Fed. 365 (C. C. A. 8th, 1894);
Parsons *v.* Childs, 345 Mo. 689, 136 S. W. (2d) 327, 332; Cert. den. 310 U. S. 640;
Old Colony Trust Co. *v.* O. M. Fisher Home, Inc., 301 Mass. 1, 16 N. E. (2d) 10. (1938);
Westport Bank & Trust Co. *v.* Fable, 126 Conn. 665, 13 Atl. (2d) 862, 866 (1940).

(Whatever the motives of those who are now, or in the past have been, appellant's members, there now exists, largely from donations and bequests, an institution which, without profit, and at a charge to them of less than half its actual outlay, affords complete protection to the health of nearly ten thousand persons, and also stands ready to treat, on like terms, all other persons complying with its simple and non-exclusive requirements for admission.)

(d) That a non-profit institution makes a charge against members, or that its inmates pay a consideration on their admission, or that a non-profit school or hospital makes some charge to help to defray the cost of its operation, does not affect its charitable character.

Bogert on Trusts, pp. 114-115;
Estate of Lowe, 326 Pa. 375, 192 Atl. 405, 111 A. L. R. 518 (1937);

People *v.* Morton, 373 Ill. 72; 25 N. E. (2d) 504 (1940);
Little *v.* City of Newburyport, 210 Mass. 414, 96 N. E. 1032;
In re McDowell, 217 N. Y. 454, 112 N. E. 177;
In re Y. M. C. A. Retirement Fund Inc., 18 B. T. A. 139;
Episcopal Academy *v.* Phila., 150 Pa. 565, 573;
Summers *v.* Chicago Title & Trust Co., 335 Ill. 564, 167 N. E. 777.
Andrews *v.* Young Men's Christian Association, 226 Iowa 374, 284 N. W. 186 (Iowa 1939).

(e) Restriction of benefits to its own members does not affect a non-profit institution's charitable character.

(It would be misleading to argue that petitioner "restricts" its benefits to "its own" members. Since membership is unlimited, it evidently seeks to diffuse them as widely as possible.)

Bogert on Trusts, Vol. 2, pp. 1124-25;
Hibernian Benevolent Society *v.* Kelly, 28 Ore. 173, 42 Pac. 3, 30 L. R. A. 167, 52 A. S. R. 769;
Morrow *v.* Smith, 145 Ia. 514, 124 N. W. 319;
United States *v.* Proprietors of Social Law Library, 102 Fed. (2d) 481, 484 (C. C. A. 1st, 1939);
Pease *v.* Pattinson, L. R. 32 Ch. Div. 154, 55 L. J. Ch. N. S. 617, 54 L. T. N. S. 209;
Spiller *v.* Maude, 11 L. T. (N. S.) 329;
In re Buck (1896), 2 Ch. 727;
Carter *v.* Whitcomb, 74 N. H. 482, 487, 69 Atl. 779;
Widows' and Orphans' Home of O. F. *v.* Commonwealth, 126 Ky. 386, 103 S. W. 354;
Most Worshipful G. L. of A. F. & A. M. *v.* Board of Review, 281 Ill. 480, 117 N. E. 1016, 1017;
City of Indianapolis *v.* The Grand Master, &c., 25 Ind. 518, 522;
Estate of Lubin, 186 Cal. 326;
Estate of Henderson, 17 Cal. (2d) 853 (1941).